

**MAIL TO:**

STATE OF UTAH  
DIVISION OF PURCHASING  
3150 STATE OFFICE BUILDING, STATE CAPITOL  
P.O. BOX 141061  
SALT LAKE CITY, UTAH 84114-1061  
TELEPHONE (801) 538-3026  
<http://www.purchasing.state.ut.us>

**Request for Proposal**Solicitation Number: **RM3068**Due Date: **01/07/03at 3:00 P.M.**

Date Sent: November 21, 2002

**Agency Contract**

Goods and services to be  
purchased:

**CONTRACT FOR MEXICAN SPOTTED OWL HABITAT MODEL VALIDATION AND DISTRIBUTION  
STUDY****Please complete**

Company Name		Federal Tax Identification Number	
Ordering Address	City	State	Zip Code
Remittance Address (if different from ordering address)	City	State	Zip Code
Type <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Government	Company Contact Person		
Telephone Number (include area code)	Fax Number (include area code)		
Company's Internet Web Address	Email Address		
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered)	Days Required for Delivery After Receipt of Order (see attached for any required minimums)		
The following documents are included in this solicitation: Solicitation forms, instructions and general provisions, and specifications. <u>Please review all documents carefully before completing.</u>			
The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes ____ No _____. If no, enter where produced, etc. _____			
Offeror's Authorized Representative's Signature		Date	
Type or Print Name		Position or Title	

**STATE OF UTAH  
DIVISION OF PURCHASING**

**Request for Proposal**

**Solicitation Number: RM3068**

**Due Date: 01/07/03**

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**Vendor Name:**

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**ONE YEAR CONTRACT WITH OPTION TO RENEW ON A YEAR TO YEAR BASIS FOR FIVE YEARS FOR MEXICAN SPOTTED OWL HABITAT MODEL VALIDATION AND DISTRIBUTION STUDY PER ATTACHED SPECIFICATIONS.**

**QUESTIONS ON SPECIFICATIONS CALL FRANK HOWE AT (801) 538-4764.**

**QUESTIONS ON PURCHASING PROCESS (NOT RELATED TO SPECIFICATIONS) CALL ROSELLE MILLER AT (801) 538-3232.**

**RX: 560 35000000006**

## REQUEST FOR PROPOSAL - INSTRUCTIONS AND GENERAL PROVISIONS

1. **PROPOSAL PREPARATION:** (a) All prices and notations must be in ink or typewritten. (b) Price each item separately. Unit price shall be shown and a total price shall be entered for each item bid. (c) Unit price will govern, if there is an error in the extension. (d) Delivery of services as proposed is critical and must be adhered to. (e) Incomplete proposals may be rejected. (f) This proposal may not be withdrawn for a period of 60 days from the due date. (g) Where applicable, all proposals must include complete manufacturer's descriptive literature. (h) By signing the proposal the offeror certifies that all of the information provided is accurate, that they are willing and able to furnish the item(s) specified, and that prices offered are correct.

2. **SUBMITTING THE PROPOSAL:** (a) The proposal must be signed in ink, sealed, and if mailed, mailed in a properly-addressed envelope to the DIVISION OF PURCHASING, 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061. **The "Solicitation Number" and "Due Date" must appear on the outside of the envelope.** (b) Proposals, modifications, or corrections received after the closing time on the "Due Date" will be considered late and handled in accordance with the Utah Procurement Rules, section 3-209. (c) **Your proposal will be considered only if it is submitted on the forms provided by the state. Facsimile transmission of proposals to DIVISION will not be considered.** (d) All prices quoted must be both F.O.B. Origin per paragraph 1.(c) and F.O.B. Destination. Additional charges including but not limited to delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, costs of bonds, or for any other purpose must be included in the proposal for consideration and approval by the Division of Purchasing & General Services (DIVISION). Upon award of the contract, the shipping terms will be F.O.B. Destination, Freight Prepaid with freight charges to be added to the invoice unless otherwise specified by the DIVISION. No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, costs of bonds, or for any other purpose will be paid by the state unless specifically included in the proposal and accepted by DIVISION. (e) By signing the proposal the offeror certifies that all of the information provided is accurate and that he/she offers to furnish materials/services for purchase in strict accordance with the requirements of this proposal including all terms and conditions.

3. **BONDS:** The state has the right to require a bid or proposal bond, payment bond and/or a faithful performance bond from the offeror in an amount not to exceed the amount of the contract.

4. **PROPRIETARY INFORMATION:** Suppliers are required to mark any specific information contained in their bid which is not to be disclosed to the public or used for purposes other than the evaluation of the bid. Each request for non-disclosure must be accompanied by a specific justification explaining why the information is to be protected. Pricing and service elements of any proposal will not be considered proprietary. All material becomes the property of the state and may be returned only at the state's option. Proposals submitted may be reviewed and evaluated by any persons at the discretion of the state.

5. **BEST AND FINAL OFFERS:** Discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements. Prior to award, these offerors may be asked to submit best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by a competing offeror.

6. **SAMPLES:** Samples, brochures, etc., when required, must be furnished free of expense to the state and if not destroyed by tests may, upon request made at the time the sample is furnished, be returned at the offeror's expense.

7. **DIVISION APPROVAL:** Contracts written with the State of Utah, as a result of this proposal, will not be legally binding without the written approval of the Director of the DIVISION.

8. **AWARD OF CONTRACT:** (a) The contract will be awarded with reasonable promptness, by written notice, to the lowest responsible offeror whose proposal is determined to be the most advantageous to the state, taking into consideration price and evaluation factors set forth in the RFP. No other factors or criteria will be used in the evaluation. The contract file shall contain the basis on which the award is made. Refer to Utah Code Annotated 65-56-21. (b) The DIVISION can reject any and all proposals. And it can waive any informality, or technicality in any proposal received, if the DIVISION believes it would serve the best interests of the state. (c) Before, or after, the award of a contract the DIVISION has the right to inspect the offeror's premises and all business records to determine the offeror's ability to meet contract requirements. (d) The DIVISION will open proposals publicly, identifying only the names of the offerors. Proposals and modifications shall be time stamped upon receipt and held in a secure place until the due date. After the due date, a **register** of proposals shall be established. The **register** shall be open to public inspection, but the proposals will be seen only by authorized DIVISION staff and those selected by DIVISION to evaluate the proposals. The proposal(s) of the successful offeror(s) shall be open for public inspection for 90 days after the award of the contract(s). (e) Utah has a reciprocal preference law which will be applied against bidders bidding products or services produced in states which discriminate against Utah products. For details see Section 63-56 20.5 -20.6, Utah Code Annotated.

9. **ANTI-DISCRIMINATION ACT:** The offeror agrees to abide by the provisions of the Utah Anti-discrimination Act, Title 34 Chapter 35, U.C.A. 1953, as amended, and Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities. Also offeror agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the workplace. Vendor must include this provision in every subcontract or purchase order relating to purchases by the State of Utah to insure that the subcontractors and vendors are bound by this provision.

10. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah applies to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the

product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

11. **DEBARMENT:** The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.

12. **GOVERNING LAWS AND REGULATIONS:** All State purchases are subject to the Utah Procurement Code, Title 63, Chapter 56 Utah Code Annotated 1953, as amended, and the Procurement Rules as adopted by the Utah State Procurement Policy Board (Utah Administrative Code Section R33). These are available on the Internet at [www.purchasing.state.ut.us](http://www.purchasing.state.ut.us).

(Revision 2/14/2000 - RFP.Instructions)

# **REQUEST FOR PROPOSAL (RFP)**

## **Solicitation #RM3068**

### **1. TITLE: Mexican Spotted Owl Habitat Model Validation and Distribution Study**

### **2. RFP INFORMATION AND CONDITIONS:**

Purpose and Intent: The purpose of this request for proposal is to provide state and federal land and wildlife management agencies with scientifically-based data that will aid future decision making by further enhancing the understanding of Mexican Spotted Owl habitat characteristics, distribution and productivity in the state of Utah. This will be done by validating and revising the current Mexican Spotted Owl habitat model through systematic and random field validation techniques and GIS modeling.

Work will include both field validation surveys and GIS modeling. Collection of data will require nighttime owl surveys under extremely harsh and dangerous conditions in remote areas of southern and eastern Utah.

Surveys will be conducted in southern and eastern Utah primarily but not limited to the area south of the Uinta Mountains and south and east of the Wasatch Range.

Requirements include: rock climbing and repelling skills, technical white-water boating skills, operation of 4WD vehicles, previous experience finding Mexican Spotted Owls in Utah, extensive knowledge of Utah canyon country, proven record in producing scientifically-defensible results and reports for state and/or federal contractors, extensive knowledge of Mexican Spotted Owl biology and natural history at all life stages (juvenile, subadult, adult) and seasons (breeding, winter, dispersal), extensive knowledge of Mexican Spotted Owl distribution in Utah, extensive knowledge of Mexican Spotted Owl habitat and home range requirements in Utah, experience with state-of-the-art GIS habitat modeling, mapping and display techniques, experience developing statistically-valid multivariate habitat models, experience modeling Mexican Spotted Owl canyon habitats in Utah and/or other the southwest states, Spotted Owl Survey Certification and current state and federal permits.

In addition, it is strongly desired that the Principle Investigator (contractor) hold a Ph.D. in ornithology, biology, wildlife biology, zoology, or a related field of study.

Response Date: Four copies of your proposal must be received at the State of Utah, Division of Purchasing, 3150 State Office Building, Salt Lake City, UT 84114 prior to the closing date and time specified. Proposals received after the deadline will be late and ineligible for consideration.

### **3. CONTRACT INFORMATION**

All Standard Terms and Conditions (Attachment A) pertaining to State of Utah contracts apply. Records of specific Spotted Owl locations are protected under GRAMA and may not be released by the contractor without express written permission from the Utah Division of Wildlife Resources.

The final modeling product must be in a format compatible with UDWR GIS capabilities (preferably ArcView or alternately ArcInfo). All geographic location information must be in Universal Transverse Mercator units.

The initial contract will extend from within 30 days of the time of award to December 31, 2003. Thereafter, an option to renew on a year-to-year basis for up to 5 years may be offered depending on availability of funds and contractor performance.

#### 4. BACKGROUND

The Utah Division of Wildlife Resources seeks to develop a scientifically defensible predictive Mexican Spotted Owl Habitat model. The model will serve the purpose of predicting where Mexican Spotted Owls are most likely to occur in the state. The model will also provide a starting point for state and federal biologists and land managers in assessing the potential impacts of a wide variety of projects on Mexican Spotted Owls and their habitats.

Currently, the UDWR and federal agencies use a habitat model developed in 1997 at a scale of 1:250,000. This model is known to be overly inclusive, and UDWR desires to develop a model that eliminate much of the Aerror of commission@ in the current model. The revised model should take into account all habitat characteristics of Mexican Spotted Owls gathered during past and future (this study) field surveys. These will include information on canyon characteristics, vegetation, geology and other biotic and abiotic variables.

The modeling process will also incorporate factors known or suspected to influence Mexican Spotted Owl habitat selection, such as, thermal intensity and thermal duration. The final model should be developed at the 1:100,000 to 1:24,000 scale where possible.

#### 5. SCOPE OF WORK (TASKS)

- 1) Background Research: provide review of previous studies, documenting biology, life history, seasonal movement patterns, home range characteristics, habitat characteristics and distribution of Mexican Spotted Owls in Utah and other southwestern states. Completion of this task should result in delivery of a comprehensive background document (or section) and bibliography in the final report.
- 2) Sampling Design: design a sampling scheme which will meet the current scientific standards of statistical and biological rigor. This task shall be completed within 30 days of contract award and will result in delivery of a valid sampling design which must be agreed to by UDWR and will be reported in the Methods section of the final report.
- 3) Survey and data collection: document presence/absence, nesting, and/or productivity of Mexican Spotted Owls at randomly selected and systematically selected sampling sites; record UTM coordinates and habitat variables at each sampling site. Techniques must meet currently acceptable standards for Mexican Spotted Owl surveys in canyon habitat types; techniques and variables to be collected must be agreed to by UDWR. Task completion will be required for completion of subsequent tasks (4-8). Detections (UTM coordinate, descriptive location, and date) will be reported to UDWR as soon as possible after they occur; notification can be made by phone, fax, or e-mail.
- 4) Site Mapping: completion of this task will yield maps of each sampling site including sampling points and detections; these maps (or copies) will be provide to UDWR as a deliverable.
- 5) Data entry: input data into database to be used in model development. Deliverables for this task include a populated database compatible with UDWR data management standards (Microsoft Excel or Access);
- 6) Data analysis: conduct spatial analyses of habitat variables. As a deliverable, analyses will be presented in the Results section of the final report; results detailing each step in the analysis process should be presented in text, graphs, and/or tables.
- 7) Habitat Modeling: develop predictive habitat model at a fine scale of resolution (1:100,000 or better) for breeding season Mexican Spotted Owl sites in Utah. Deliverables for this task are a) a series of maps illustrating where owls are predicted to occur (and not occur) in the state and b) a GIS coverage (ArcView or ArcInfo) at the 1:100,000 or 1:24,000 scale illustrating predicted owl occurrence. Additional coverages will include all survey sites as well as positive and negative detection data.
- 8) Reporting results: present results in report, maps, and coverages. The final project report will be the deliverable for this task. The report will be formatted according to a mutually agreed upon periodical format (e.g., Journal of Wildlife Management) and will be prepared as a peer-reviewed manuscript. Maps will be prepared according to a mutually agreed upon format suitable for presentation to professional audience.

Coverages and metadata will conform to the standards set forth by the State of Utah (AGRC).

Unless otherwise noted, a draft form of all deliverables are due at least one month prior to the completion of the project and final deliverables are due on the project completion date.

## **6. SCOPE OF ACTIVITY**

The working environment for the field portion of this project requires special skills pertaining to travel into remote canyon areas in southern and eastern Utah. These skills include but are not limited to rock climbing and repelling, white-water rafting, 4 wheel-drive vehicle operation, wilderness camping, and wilderness first aid. Extensive knowledge of Utah canyon country is required to facilitate logistics (reduce cost), data collection, safety, and sampling efficiency. Work will require close coordination with many state and federal agencies; the data collected will be sensitive in nature and protected by the Utah GRAMA.

## **7. TASKS TO BE COMPLETED**

Tasks, deliverables, and deadlines are outlined in Section 5 above

**8. PROPOSAL PREPARATION** (Notes within the Scope of Work) The proposal must include the following:

- 1) an example of background information on Mexican Spotted Owls in Utah or the Southwest;
- 2) one or more tentative sampling designs for this project;
- 3) an example of survey and data collection projects in which the applicant has participated where data on site occupancy, nesting, productivity, UTM coordinates, and habitat variables were collected on Mexican Spotted Owls;
- 4) examples of Mexican Spotted Owl habitat model development and/or validation projects in which the applicant has participated;
- 5) a list of reports and publications pertaining to the current study which illustrate the applicants record in producing scientifically-defensible reports for state and/or federal contractors;
- 6) statement of skills required to carry out this project (see BIDDING INFORMATION AND CONDITIONS/Purpose and Intent).
- 7) proof of Mexican Spotted Owl Survey Certification and current permits.

## **9. PROPOSAL PREPARATION INSTRUCTIONS**

The proposal should contain 3 parts: a technical proposal, a budget, and staff qualifications.

The technical proposal should follow the standard scientific writing format including sections on how the applicant will address: background information, study area, methods, analysis, results interpretation, management implications (discussion), and literature cited. The proposal must demonstrate how each task (SCOPE OF WORK) is to be accomplished and present a tentative timetable for task completion. Note that mere repetition of tasks taken from the scope of work section will not be considered responsive to the RFP.

The Budget should indicate a total proposed cost and be itemized into major cost categories (over \$1000.00) such as salaries, travel, equipment purchase and/or rental, overhead, data (coverage) acquisition. Smaller cost items may be combined in the budget (e.g., office supplies, maps).

Staff Qualifications and Experience: this section should contain the applicants organization and other affiliations, and resumes of major contributors (PI, co-PIs) or staff assigned to the project. Also provide experience both in general and in projects similar to the subject of the RFP (the latter may be mostly

satisfied by the applicants response to section 8: PROPOSAL PREPARATION NOTES WITHIN THE SCOPE OF WORK).

#### 10. EVALUATION CRITERIA

Proposals will be evaluated by a committee against the following criteria with assigned weights as indicated. Each area of the evaluation must be addressed in detail in the proposal.

<b><u>Weight</u></b>	<b><u>Criteria</u></b>
30%	Cost.
20%	Modeling experience (experience: 1) using state-of-the-art GIS habitat modeling, mapping and display techniques, 2) developing statistically-valid multi-variate habitat models, 3) modeling Mexican Spotted Owl canyon habitats).
20%	Species and area specific knowledge (extensive knowledge, particularly pertaining to Utah or the Colorado Plateau, of Mexican Spotted Owl: 1) biology and natural history at all life stages and seasons, 2) distribution, 3) habitat and home range requirements).
20%	Previous field experience (experience: 1) finding Mexican Spotted Owls in canyon habitats on the Colorado Plateau, 2) developing and implementing sampling designs to test habitat models).
5%	Technical skills and logistic knowledge (rock climbing and white water skills, knowledge of Utah canyon country, Spotted Owl Survey Certification and current state and federal permits).
5%	Proven record (in producing scientifically-defensible results and reports for state and/or federal contractors).



## ATTACHMENT A: STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The CONTRACTOR shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the CONTRACTOR for costs authorized by this contract. These records shall be retained by the CONTRACTOR for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The CONTRACTOR agrees to allow STATE and Federal auditors, and STATE Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** CONTRACTOR represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The CONTRACTOR shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the STATE to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the CONTRACTOR by the STATE. The CONTRACTOR shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE shall not be deemed to be employees or agents of the CONTRACTOR.
7. **INDEMNITY CLAUSE:** The CONTRACTOR agrees to indemnify, save harmless, and release the STATE OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the CONTRACTOR'S officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The CONTRACTOR agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the CONTRACTOR agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
14. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.
15. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, as to distribution of copies, and Contractor gives the STATE express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

(Revision date: Apr 24, 2002)